IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15700 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRUST OF THE TEMPLE OF LAXMI NARAYAN DEV AT VADTAL - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 3 - Respondent(s)

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Appearance :
MR KAUSHAL D PANDYA for the Petitioner.
MS LILU K BHAYA for the Respondents.

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CORAM : HON'BLE MR JUSTICE DN PATEL

Date : 04/08/2005

ORAL JUDGMENT

Rule. Learned advocate Ms. L.K.Bhaya appearing for the respondents on caveat waives service of notice of Rule. This petition has been preferred against the order dated 26th April, 2005 in Appeal no. A-4/2005 (Annexure “H” to the petition) passed by the appellate committee of the respondents.

2. The learned advocate for the petitioner has tendered a draft amendment today. Looking to the nature of the contentions raised in the memo of the petition and looking to the facts and circumstances of the case, the draft amendment is allowed. The learned advocate for the petitioner shall carry out necessary draft amendment in the petition during the course of the day.

3. Upon a query raised by this Court, the learned advocate for the petitioner mainly submitted that the petitioner has never indulged in committing theft of electrical energy and there is not a single incident in past. No additional bill for theft has ever been issued to the petitioner.

It is also submitted by the learned advocate for the petitioner that the petitioner is a public charitable trust. It is regularly paying the bills towards consumption of electrical energy. The petitioner is a consumer of the respondents since more than half a century. In the present case also, the petitioner has not committed any theft of electrical energy. This is an admitted position of fact even by the respondents. It is submitted by the learned advocate for the petitioner that on the date of checking of the meter of the petitioner, that is, on 4th October, 2004, the respondents carried out accue meter test that the meter of the petitioner was running slow by 38.18%. Even as per the checking report, which is at Annexure "B" to the memo of the petition, the meter was found slow by 38.18%. The petitioner raised an objection against these measurements of slowness by the respondents. The meter was therefore, sent to the Electrical Inspector and during the examination of the said meter under section 26)6) of The Indian Electricity Act, 1910, the contention raised by the petitioner was found to be true. The Electrical

Inspector again carried out test for slowness of the meter and it was found out that there was slowness of the meter by 17.78% only. Thus, the measurements of the respondents of slowness of the meter instead of 38.18% was reduced to 17.78% by the Electrical Inspector and therefore, additional bill which was issued by the respondents to the tune of Rs. 8,49,816.24 ps. was also consequently reduced to the tune of Rs. 1,23,464.64 ps. It is also submitted by the learned advocate for the petitioner that the said amount of Rs. 1,23,464.04 ps. has already been paid by the petitioner.

4. It is also submitted by the learned advocate for the petitioner that as per the respondents, connected load on the said meter was 48 KW. Instead of the said connected load, there was a consumption for more electrical energy by the petitioner. Hence, additional bill for Rs. 20,48,765.04 ps. was issued by the respondents. The petitioner also raised a dispute for issuance of the said bill. For preferring an appeal before appellate committee of the respondent, 20%of the

aforesaid bill was paid by the petitioner. The amount paid by the petitioner of the aforesaid bill is at Rs. 4,09,754.00 ps. Thus, the petitioner has deposited twice two different amounts, the total of which comes to more than Rs. 5 lacs. The appeal was preferred, but the appellate committee has decided the appeal ex parte and therefore, to avail of an opportunity of being heard before the appellate committee, the present petition has been preferred.

5. The learned advocate for the petitioner has further submitted that on the last date of hearing, that is, on 26th April, 2005, the date on which the impugned order was passed by the appellate committee, the petitioner could not remain present before the committee and hence a letter was written on 21st April, 2005, wherein it was prayed for adjournment before the appellate committee. Simultaneously, an intimation was also given at Anand office of the respondent Board because Anand office was also communicating to the petitioner the dates of adjournments. Thus, a letter was written

in advance on 21st April, 2005 for adjournment, but without affording an opportunity of being heard on 26th April, 2005, an ex parte order has been passed by the appellate committee. The petitioner being a Trust has no other intention of remaining absent, but as stated in the said letter, there was an election and counting of votes was fixed on 26th April, 2005. The election was held on the basis of the scheme prepared by this Court, but the respondents have decided the matter ex parte and therefore, the said order may be quashed and the petitioner may be allowed to be heard by the appellate committee. Necessary amount of 20% for hearing has already been paid by the petitioner. There is no incident of theft recorded by the respondent in the past against the petitioner Trust. The petitioner Trust is a law abiding Trust and is regularly paying the bills for electricity consumption and therefore, without going into further merits of the case as to connected load, as to the signature on the checking report on 4th October, 2004 and other factors of A x B x C x D formula, the petitioner will be satisfied

if the matter is remanded to the appellate committee for fresh hearing and the petitioner is given any date for hearing and no adjournment will be asked for by the petitioner.

6. I have also heard the learned advocate for the respondents who has submitted that there is no error committed b the appellate committee while passing the impugned order. The impugned order is dated 26th April, 2005. Enough opportunity of being heard was given to the petitioner. 27th January, 2005 was the first date of hearing. Thereafter, upon request of the petitioner, it was fixed on 22nd February, 2005 and again upon request of the petitioner, 26th April, 2005 was the date fixed for hearing. Neither petitioner, nor its lawyer remained present before the appellate committee. The petitioner remained absent on 26th April, 2005. The respondent cannot wait for indefinite time in decide the appeal. It is also submitted by the learned counsel for the respondents that so far as signature of the representative of the petitioner on checking report is concerned, at this stage, the

petitioner cannot raise any objection. The checking report which is at Annexure “B” to the memo of the petition is signed by the representative of the petitioner trust, who has signed as “Ravjibhai”. The learned advocate for the respondents has also relied upon the judgment in the case of Ramjibhai Harjibhai vs. Gujarat Electricity Board and another reported in AIR 2000, Guj,225 and has submitted that the signature cannot be now denied by the petitioner. Similarly, so far as the contracted load is concerned, the petitioner cannot raise any objection. The contracted load was 48 KW. Even this figure has been noted by the Electrical Inspector in his order under section 26(6) of the Act of 1910. The connected load found out during checking was more than contracted load and therefore, additional bill worth Rs. 23,48,765/- was issued. Despite absenteesam of the petitioner, the appellate committee has considered other aspects of the matter and has reduced the aforesaid bill and on the basis of the decision given by the appellate committee, the said bill is now reduced to Rs.

14,31,039.12 ps. This Court is not sitting in appeal and hence the order passed by the appellate committee may not be interfered with and the petition may be dismissed.

7. Having heard the learned counsel for both the parties at length, and looking to the facts and circumstances of the case, in my view, the order dated 26th April, 2005 passed by the appellate committee in Appeal no. A-4/2005 is required to be quashed and set aside for the following reasons.

(i) The petitioner trust's meter was checked on 4th October, 2004. Initially, slowness of the meter was found by the respondent. It was at 38.08%. This slowness was checked through accue meter test. This was objected by the petitioner. Ultimately, upon request of the petitioner and as per the provisions of the Indian Electricity Act, 1910, the meter was sent to the Electrical Inspector and the Electrical Inspector vide his order dated 13th December, 2004 under section 26(6) of the Act, 1910, has decided that the meter was found slow by 17.78%. Thus, instead of 38.18% of slowness of

the meter, the Electrical Inspector, in exercise of the powers under section 26(6) of the Act of 1910, found that slowness of the meter was only 17.78%. The contention raised by the petitioner about slowness of the meter was found to have some substance. Accordingly, the original bill which was issued by the respondents for Rs. 8,49,816.26 ps. was reduced to Rs. 1,23,464.64 ps. The petitioner trust has deposited this amount. This fact has been admitted by the learned advocate for the respondents.

(ii) There is also a dispute as to connected load and contracted load. The contracted load as per the respondents is 48 KW, whereas the load found during checking of the meter was in excess and therefore, an additional bill for Rs. 20,48,765.04 ps. was issued by the respondents. It is also an admitted position of fact that the petitioner has deposited 20% of the aforesaid bill amount, that is, an amount of Rs. 4,09,754.00 has already been deposited by the petitioner as a condition precedent to prefer an appeal before the appellate committee. The appeal has been preferred.

The petitioner being a trust, wrote a letter on 21st April, 2005 for getting adjournment on 26th April, 2005, wherein it was pointed out that there was an election and counting of voters on the basis of the scheme prepared by this Court and therefore, on 26th April, 2005, the petitioner was unable to remain present before the appellate committee. It is true that on earlier two occasions, that is, on 27th January, 2005 and 22nd February, 2005, adjournments were sought for by the petitioner. Nonetheless, looking to the facts and circumstances of the case, especially when the petitioner is a charitable trust, coupled with the fact that no incident of theft has ever been committed by the petitioner in past and also coupled with the fact that even the present case, is also, not a case of theft of electrical energy and more so when the petitioner has deposited an amount of Rs. 1,23,464.64 ps. (on the basis of contention that slowness of the meter recorded by the respondent at 38.18% which was found incorrect upon independent measurements of the slowness of the meter by the Electrical Inspector under the

provisions of section 26(6) of the Act of 1910 and vide order at Annexure “G” to the memo of the petition, the said slowness was found only at 17.78%) and especially when the amount of 20% of the dispute bill has been deposited, that is, an amount of Rs. 4,09,754.00 ps. has also been deposited by the petitioner, the impugned order passed by the appellate committee is required to be quashed and set aside because the the appellate committee has passed the impugned order without affording an opportunity of being heard to the petitioner. The learned advocate for the respondents has no objection if tentative date for hearing is fixed. This tentative date of hearing may be reshuffled by the Board as per their own need, but it will not be open for the petitioner to ask for the change of date if the appellate committee is ready to hear the petitioner on 22nd August, 2005. It is also assured by the learned advocate for the petitioner that no further date of adjournment will be prayed for by the petitioner. But if the respondents want to reshuffle the date of hearing on 22nd August, 2005, again on the next

date of hearing, the petitioner will go on with the hearing, without asking for the date of adjournment.

8. In view of the aforesaid facts, the impugned order dated 26th April, 2005 in Appeal no. A-4 of 2005 passed by the appellate committee of the respondents is hereby quashed and set aside without entering into merits of the case.

9. At this stage, the learned advocate for the respondents submitted that the petitioner must be ordered to deposit full outstanding amount before hearing by the appellate committee. Looking to the facts and circumstances of the case, it appears that once an amount of Rs. 1,23,464/- has already been deposited by the petitioner and subsequently an amount of Rs. 4,09,754.00 has been deposited as 20% of the revised bill as a condition precedent for hearing before the appellate committee and as the petitioner is a charitable trust and no previous incident of theft has been committed in

past, I am not accepting the prayer made on behalf of the respondents. The respondents shall hear the petitioner tentatively on 22nd August, 2005. If 22nd August, 2005 is not suitable to the respondents, they may fix another date of hearing, but the petitioner shall not ask for any date of adjournment, this is also so assured by the learned advocate for the petitioner. The impugned order dated 26th April, 2005 passed by the Appellate Committee in Appeal No. A-4 of 2005 is hereby quashed and set aside. The matter is remanded to the Appellate Committee and the Appellate Committee of the respondents is hereby directed to decide the appeal of the petitiner afresh, after giving an opportunity of being heard. Rule made absolute to the aforesaid extent with no order as to costs. Direct service permitted.

(D.N.Patel,J)

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